

PRESIDING OFFICER'S
RULING NO. N2012-1/58

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Mail Processing Network
Rationalization Service Changes, 2012

Docket No. N2012-1

PRESIDING OFFICER'S RULING ON
POSTAL SERVICE MOTION REGARDING LIBRARY REFERENCE
NNA-LR-N2012-1/1

(Issued May 17, 2012)

On May 1, 2012, the Postal Service filed a motion to recategorize the document filed as public Library Reference NNA-LR-N2012-1/1 into an informal statement.¹ On April 23, 2012, the National Newspaper Association (NNA) filed the library reference as a supplement to the testimony of witness David Bordewyk (NNA-T-2).² No participants filed a response to the Motion.

The Postal Service objects to the submission of the document as a library reference because it consists mainly of informal statements from unidentified mail users regarding six-day mail delivery and closing of processing plants. Motion at 2. The Postal Service argues that if the statements had been submitted directly to the Commission by these individuals, they would be categorized as informal statements and

¹ United States Postal Service Motion for Treatment of Library Reference NNA-LR-N2012-1/1 as Informal Statements Submitted Pursuant to Rule 20B, May 1, 2012 (Motion).

² NNA-LR-N2012-1/1—"Deliver the Mail!" South Dakotans for Timely, Six Day Mail Delivery, April 23, 2012 (Library Reference).

segregated from the evidentiary record in the proceeding. *Id.* While the Library Reference was sponsored by witness Bordewyk, the Postal Service contends that it does not reflect any analysis or study performed by the witness. *Id.* at 2-3. As a result, the Postal Service asserts that the public comments should stand on their own to be evaluated independently from witness Bordewyk's testimony, and treated as informal statements. *Id.* at 3.

Discussion. The Library Reference contains the results of a campaign, "Deliver the Mail", conducted by the South Dakota Newspaper Association supporting reliable six-day mail delivery. Library Reference at 2. It includes hundreds of "unfiltered comments provided by...petitioners" regarding proposed closures of mail processing centers and discontinuation of Saturday mail delivery. *Id.* The comments supporting the "Deliver the Mail" campaign are largely anonymous.

39 CFR § 3001.31(b)(2) establishes the categories of library references for materials to be used as evidence in a public hearing before the Commission. NNA filed the Library Reference as a Category 2 library reference.³ A Category 2 library reference should consist of "material relating to the testimony of specific witnesses, primarily that which is essential to the establishment of a proper foundation for receiving into evidence the results of studies and analyses." 39 CFR § 3001.31(b)(2)(i).

The Postal Service contends that the material would be more properly categorized as informal statements from commenters under Rule 20(b). Motion at 3. However, any statement filed under this section must include the name and full mailing address of the person by whom it is filed. 39 CFR § 3001.20(b). The Library Reference contains a compendium of anonymous comments, which were compiled by witness Bordewyk and his association. It reflects and is offered as support for the views the witness expresses in his testimony.

³ See National Newspaper Association Notice of Filing of Library Reference NNA-LR-N2012-1-1, April 23, 2012.

While filed as a Category 2 library reference, it does not present the results of any study or analysis regarding the docket at issue. As such, it does not properly belong in that category. As it is not a Category 2 library reference, it appears to more properly be a Category 6 library reference. Category 6 library references consist of all other materials not fitting any of the other categories. 39 CFR § 3001.31(b)(2)(i).

In filing its Motion regarding the treatment of the Library Reference, the Postal Service has indicated that it opposes including this material in the evidentiary record. The Postal Service has offered persuasive justification for why it should not be admitted as evidence, and NNA has not opposed the Motion. NNA's filing of the Library Reference does not automatically include it in the evidentiary record. The proper time to assure the Library Reference is not admitted as evidence will occur when witness Bordewyk's testimony is offered at the hearing to enter rebuttal testimony into the record. If NNA seeks to have Library Reference NNA-LR-N2012-1/1 admitted into evidence at that time, the Postal Service's objection will be considered.

RULING

The United States Postal Service Motion for Treatment of Library Reference NNA-LR-N2012-1/1 as Informal Statements Submitted Pursuant to Rule 20B, filed May 1, 2012, is denied.

Ruth Y. Goldway
Presiding Officer